



National Museums in the Context of State Succession: The Negotiation of Difficult Pasts in the Post-Cold War Reality

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Abstract

The paper explores how the recent post-Cold War wave of state succession in Europe has affected the integrity of state art collections. Firstly, the paper explains the content and nature of legal principles regulating allocation and distribution of national cultural treasures in cases of state succession. Secondly, it discusses their actual implementation in relation to two recent cases: apportionment of cultural material between Czech Republic and Slovakia (1994) and the ongoing dispute between Italy and Slovenia on the title to the so-called 'Istria's Jewels' and their future allocation. The first one refers to the exchange of certain number of medieval paintings between national museums of Czech Republic and Slovakia fundamentally driven by the principle of territorial origin and historical provenance. The issue of 'nationality' of the objects has not been raised. Inversely, the dispute between Italy and Slovenia is profoundly marked by what one may call 'the negotiation of difficult pasts'. Accordingly, this case concerns the status of the artworks evacuated by the Italian administration in 1940 from three coastline municipalities of Italian Istria, nowadays known as Slovenian Littoral or Primorska. As a result of WW II, the region was transferred to Yugoslavia. Italian inhabitants of the region emigrated or were forced to emigrate. The status of the Istrian art treasures, currently preserved in the National Gallery of Art in Trieste, remained pending. The dissolution of Yugoslavia has brought the issue to light. Indeed, Italy and Slovenia have to face legal questions regarding the fate of disputed art treasures and overcome bitter memories of the past. Within this context, the paper attempts to (re)locate the role of national museums in the broader discourse on cultural reconciliation. It advocates the view that nowadays such institutions need to be perceived both as major actors and efficient instruments in cross-border cultural co-operation.

Introduction

The paper explores how the recent post-Cold War wave of state succession in Europe has affected the integrity of state art collections. In particular, it focuses on the role and significance of national museums in the processes of dissolution of multinational states. Firstly, it explains that the allocation and distribution of national cultural treasures in cases of state succession have since the end of WW I been essentially based on two customary principles: i) territorial origin of artworks; ii) cultural significance of such items for new nation-states and their newly formed museum institutions. Secondly, the paper discusses the actual implementation of these principles in relation to two recent cases: division of cultural material between the Czech Republic and Slovakia (1994) and the ongoing dispute between Italy and Slovenia on the title to the so-called 'Istria's Jewels' and their future allocation. The first one refers to the exchange of a certain number of medieval paintings between national museums of Czech Republic and Slovakia fundamentally driven by the principle of territorial origin and historical provenance. The issue of the 'nationality' of the objects has not been raised. By contrast, the dispute between Italy and Slovenia is profoundly marked by what one might call 'the negotiation of difficult pasts'. Accordingly, this case concerns the status of the artworks evacuated by the Italian administration in 1940 from three coastline municipalities of Italian Istria, nowadays known as Slovenian Littoral or Primorska. As a result of WW II, the region became a part of the Free City of Trieste, and was eventually transferred to the independent Republic of Slovenia. Italian inhabitants of the region emigrated or were forced to emigrate. The status of the Istrian art treasures, currently preserved in the National Gallery of Art in Trieste, remained pending. The dissolution of Yugoslavia and the independence of Slovenia have brought the issue to the light: Slovenia has demanded the return of the objects, invoking the principle of territorial provenance, while Italy has argued that the treasures are entirely of Italian origin, on the one hand, and preserve the traumatic memory of the war refugees, on the other. Within this context, this paper attempts to (re)locate the role of national museums in the broader discourse on cultural reconciliation. It advocates the view that nowadays such institutions need to be perceived both as major actors and efficient instruments in cross-border cultural co-operation.

State succession and the issue of cultural property - territorial and national principles

The term 'state succession' refers to factual situations that arise when one state is substituted for another in sovereignty over a given territory (O'Connell 1967: 3). According to the definition adopted by the International Law Commission (ILC), state succession means "the replacement of one state by another in the responsibility for the international relations of territory" (UN 1974: para 3). This wording is repeated by two conventions codifying the international law on state succession: the 1978 Vienna Convention on Succession of States in Respect of Treaties (1978 Vienna Convention) (UN 1978), and the 1978 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (1978 Vienna Convention) (UN 1978). Arguably, such an approach has also been shared by the prevailing international practice and legal doctrine (International Law Association (ILA) 2008: annex; Shaw 1994: 41; Müllerson 1994: 137). Similarly, the distinction between the succession of states, concerning the relationship between at

least two state actors – predecessor and successor – and the succession of governments, referring to the change of government within one state, is widely recognized. However, the classifications of political events that may give rise to succession of states as well as the evaluation of their prerequisites and legal consequences remain disputable, due to the fact that state succession has to deal with complex political dynamics of power. Thus, the opinion that there are no general rules on state succession, which primarily follow political considerations rather than legal principles, is not uncommon in literature on this issue (Dumberry 2007: 3-4; Degan 1999).

For the purposes of methodological clarity, it seems necessary to make a distinction between territorial and legal aspects of state succession. In other words, state succession has a double nature, which consists in the transfer of sovereignty over a given territory, on the one hand, and succession in rights and obligations – pre-existing legal situations related to the territory, on the other (Verzijl 1974: 3-7). Accordingly, territorial succession (*e.g.* cession of territory, dissolution (dismemberment) of a multinational state, the gaining of independence on the part of former dependent (colonial) territories) constitutes ‘title’ – the cause for succession in other matters such as treaty obligations or other existing legal interstate situations and engagements, debts, administration, nationality of inhabitants, state property, state archives, etc. State succession in this second instance also relates to the fate of material elements of cultural heritage and international obligations related to them.

State succession to state cultural property (tangible cultural heritage) belongs to the second sphere of succession *i.e.* succession in pre-existing legal situations, as it regards assets situated or originated from a territory to which succession relates. More precisely, the material aspect determines the inclusion of tangible cultural heritage in the broader legal framework of state succession in matters of state property.

Broadly speaking, the legal regime on the passing of state property is conditioned by the category of territorial succession. However, certain principles are applicable to all cases. As a general rule, upon succeeding to the territory of the predecessor state, the successor state succeeds to all state property of that prior state, wherever it may be located. Accordingly, real (immovable) property of the predecessor situated in the territory to which succession relates, shares the destiny of that territory and passes to the successor state. The regime on state succession to movable state property is more complex as it is driven by the consideration that such a category of property is not distributed merely on the basis of fortuitous location at the date of state succession (Siehr 1993: 126). Hence the paramount criterion for the distribution of state movable property is the connection with the activity of the predecessor state in respect of the territory to which the succession of states relates. In cases of dissolution of a multinational state, the principle of ‘equity’ is generally applicable. This provides the division of movable property in ‘equitable proportions’ (Czaplinski 1999: 61-73).

The inclusion of material cultural heritage in the legal regime of state succession to state property may seem understandable and logical. Yet, the objectives driving the passing of state property from the predecessor state to the successor state profoundly differ from those pertinent to the succession of cultural material. In the first case, a paramount consideration is to provide the successor state with all the instruments indispensable to the efficient exercise of territorial sovereignty. Inversely, the control of material cultural heritage does not constitute a necessary factor to exercise sovereign powers. It primarily regards the linkage between the territory, its

human communities and collective cultural identity, though some property may also have strong symbolic connotations, embodying sovereign legitimacy to a given territory, e.g. royal regalia. In addition, material cultural heritage is not always state property and may belong to a variety of local and religious entities, private individuals, etc. In principle, state succession does not affect the private property of non-state entities, but it often happens that private rights to the disposal of cultural property are restricted by national legislation (Jakubowski 2012: 372).

Furthermore, it is notable that the consistent application of the regime of state succession to movable cultural items raises some other ambiguities. For instance, the provisions on equitable partition cannot be arguably perceived as adequate with regard to the distribution of cultural property. In particular, this refers to historical objects and works of art of universal international value. Such objects create serious problems since ‘there are no clear-cut criteria in cultural property law as to their home state, domicile or nationality’ (Siehr 1993: 126-127). Therefore, the evaluation of their local or territorial pertinence and connection with the activity of the predecessor state is questionable and hardly possible to determine.

For these reasons, international practice and legal doctrine recognize two reasons for such a ‘derogation’ or ‘modification’ of the general regime of state succession to state property, justified by cultural considerations. Accordingly, the first reason flows from the principle of self-determination of peoples in its “external” meaning – referring to situations where a people breaks free from an existing state and forms its own state by means of secession or decolonization. In such an event, it may have a claim to recover its cultural identity by repatriation of cultural objects lost and removed in the past (Vrdoljak 2008: 53-56). Thus, a clear linkage between independence, cultural development and the physical restoration of cultural material has been established. It is however disputable whether this principle has ever been applied in international practice (Chechi 2008: 174-181).

The second reason for the derogation of the general regime on state succession to state property in respect of movable cultural property consists in the correlation of the principle of the territorial origin of such items and the principle of the major significance of a cultural object for the cultural heritage of the successor state. The role of these principles for the allocation and distribution of tangible cultural heritage in the practice of state succession is fundamental. Accordingly, the principle of the territorial origin of state cultural property was developed in the nineteenth century for the purposes of peace-treaty negotiations conducted by the newly unified nation-states of Germany and Italy with Denmark and Austria, respectively (Kowalski 2001: 141).

Apparently, the combined principles of territorial origin and cultural significance were widely applied in relation to the allocation and distribution of artworks and other national treasures during the post-WWI period and the dismantling of multinational empires. However, the concretization of such a linkage in state practice and legal doctrine was not consistent. Nonetheless, it has been observed that the practice of peace treaties generally applied the idea of repatriation of cultural material to places where they originated from or to the regions whose “intellectual patrimony” they formed (de Visscher 1949: 836-837). However, these considerations, even when legitimate, served only as the basis for negotiations between the states concerned and they were not treated as binding rules of international law. Moreover, the prevailing state practice questioned the principle of cultural significance to the successor state, in favour of the principle of ‘inviolability of collections forming an organic whole, the completeness

of which is in itself of world-wide value' (de Visscher 1949: 836). In addition, the rights of successor states based on the territorial linkage (provenance) of certain cultural treasures were often challenged by the principle of their great importance to the intellectual patrimony and cultural identity of the predecessor state.

It is clear that the principle of territoriality within the area of state succession in matters of movable cultural property, though providing easily predictable solutions, cannot be consistently applied to all the scenarios. This is particular true in the case of the profound post-WWII changes to territorial boundaries in Europe, followed by the displacements of entire national and/or ethnic groups. Some of the post-WW II peace treaties provided for an unconditional restoration of those properties originating from the ceded territory. In other cases, certain *de facto* solutions were applied to the problem at hand: the priority of the collective cultural rights of a group over the general principle of territoriality was tacitly recognized. In fact, in a few cases, cultural property was dislocated and followed the destiny of displaced, expatriated communities. On the other hand, the process of decolonization showed a common and firm disagreement of predecessor states (former colonial powers) to share the cultural resources acquired during colonialism with the newly independent postcolonial states. It has been argued that the cases of decolonization should be governed under a rather vague *ex gratia* regime of 'return', based more on moral considerations rather than any legal principles (Kowalski 2001: 162-163).

In fact, international practice has manifested a common reluctance of states in applying any legal argumentation in respect of the allocation of cultural property in state succession. In a number of recent cases, the actual returns have been made on the basis of moral considerations or *ex gratia* gestures in the framework of friendly relations between states. Such gestures constitute a highly convenient diplomatic instrument for predecessor states. Through the voluntary return of the most claimed objects, they manifest their 'good faith' and may often avoid long-lasting legal disputes and political controversies on the status of all cultural property removed from the territory to which succession of state relates. In addition, the increasing incidence of international cultural heritage law for interstate relations may affect the solutions accorded between states in respect of the allocation of cultural property. In particular, the role of the general procedural principle of co-operation in the sphere of cultural heritage cannot be underestimated. This principle introduced at the universal level by the 1945 UNESCO Constitution (UNESCO 1945), and the subsequent 1966 UNESCO Declaration of Principles of International Cultural Co-operation (UNESCO 1966) is driven by the common concern of the entire international community in the protection of cultural heritage in its local, national and global dimensions (Chechi 2012: 362-368). Moreover, it is also recognized that cultural co-operation and protection of cultural heritage serve as efficient tools in post-conflict reconciliation and stabilization of states and their boundaries (Odendahl, Peters 2009: 263-279).

The fall of the Berlin Wall and the subsequent dissolution of the Cold War political and territorial system have once again opened up the question of the allocation and distribution of cultural property in state succession. In this light, it seems necessary to recall the approach taken by the Institute of International Law (IIL). At the 2001 Vancouver session, the Institute adopted a recommendation entitled 'State Succession in Matters of Property and Debts' (IIL Recommendation) (IIL 2001). Under Article 16, reaffirmed the principle of territoriality applicable to the allocation of state property, based on the criteria of close connection and

equitable apportionment. Then it introduced a special regime for the movable property of major importance to the cultural heritage of a successor state (Article 16(5), and Article 16(6)). Accordingly, the ‘property that is of major importance to the cultural heritage of a successor state from whose territory it originates shall pass to that state’. It also recommended that ‘such goods shall be identified by that state within a reasonable period of time following the succession.’

Apparently, these two principles are also nowadays valid in respect of the allocation of cultural property in state succession, though they are of a non-binding nature. In relation to these, Yves Huguenin-Bergemat distinguishes four major non-binding principles applicable to the allocation of movable cultural property (Huguenin-Bergemat 2010: 246-260). These are extensively based on the settlements in matters of cultural property allocation in the case of the dissolution of Austria-Hungary in light of current tendencies in international law. Accordingly, the first rudimentary principle is defined as territorial provenance (origin) of cultural assets, which is combined with the second principle – the preservation of cultural heritage. The linkage between these two principles is crucial, as the protection of cultural property in its original historical, geographical and cultural contexts constitutes one of the major fundamentals of international cultural heritage law. Thus, the significance of certain objects for the cultural heritage of a successor state needs to be balanced by the local or regional value of a given object. Yet the applicability of these two principles can be challenged by the principle of the integrity of collections of a universal value. In some cases, the distribution of state cultural property may be based on the principle of equitable division. The concerned principles have been applied in succession agreements in recent cases of multinational state dissolutions: Czechoslovakia, Yugoslavia, and the Soviet Union. However, their actual implementation in interstate practice has been rather disappointing as only the Czech Republic and Slovakia managed to finalize the division of state cultural property.

Dissolution of Czechoslovakia

The events of the national and democratic movements in the Czechoslovak Socialist Republic (CSSR) initiated in March 1988 led to the “Velvet Revolution” in the autumn of 1989. This ended the leadership of the Communist Party. In the last weeks of that year, the democratic opposition came into power. On December 29th a new president, Vaclav Havel, was chosen and in 1990 the first free parliamentary elections took place since 1946. In the same year the CSSR was replaced by a new federal state: Czech and Slovak Federal Republic (CSFR). However, it became obvious that the interests of the two countries were drifting in different directions. In 1992, due to political and economic tensions, the CSFR Federal Assembly decided on the dissolution of the federation. On 13 November 1992, the Constitution Act 541 on the apportionment of property of the Czech and Slovak Republics (Czechoslovakia 1992a) was passed. Immediately, on November 25th the Federal Assembly voted the Constitution Act 542, which formally ended the existence of Czechoslovakia as of the 31st of December 1992. The dissolution of the CSFR took effect on 1st January 1993.

General rules of the division of state property and the cultural exemption

The CSSR’s state property comprised all immovable and movable property, including final rights, interests, and obligations of the CSSR or its organizations, situated in the state territory and abroad. Under Article 3 of the Constitutional Act, the division of state property was based on the

principle of territoriality and generally followed the regime of Article 18 of the 1983 Vienna Convention. Accordingly, both Republics acquired the immovable property situated in their territories, and part of the movable property connected with the activities of the state in those territories. The property was divided proportionally by the populations of the two Republics, in all other questions not settled in conformity with the territorial rule (2:1 in favour of the Czech Republic). Under Art. 9, a special bilateral commission was established in order to implement the 1992 decision. This led to the conclusion of a number of detailed agreements adopted by the two successor states of the CSFR from 1993 onwards.

As regards the allocation of state cultural property, in the vast majority of cases this was based on territorial and institutional appurtenance. All the problematic cases were excluded from the general distribution of state property and were to be settled by a special bilateral commission established by the Czech and Slovak agreement on the reciprocal arrangement of cultural heritage issues, signed in 1993. By 1995, all the solutions to these controversies were finalized and no external arbiters or experts were called on (Bojnicky Altar 1995).

Czechoslovakian cultural property at the date of state succession

Following the “Velvet Revolution” and the democratization of political life, Czechoslovakia had to confront a number of questions concerning the matter of cultural heritage. It is important to mention however that they mainly referred to the consequences of WWII, in particular, war looting, confiscation and post-war nationalization of private collections. In fact, there were no controversies relating to the interwar period. This was due to the fact that between the years 1918-1938 there were no particular displacements of museum items between the respective territories of the Czech Republic and Slovakia. Moreover, before the creation of the dual federal republic in 1918, the history of these two countries evolved separately under the Habsburg rule.

The crucial period for the cultural patrimony of Czechoslovakia began in 1938, when the Munich Agreement was concluded. This sanctioned the annexation of the ethnically German territories of Sudetenland to the Third Reich and the transfer of other border provinces to Hungary and Poland. The partition of Czechoslovakia was concluded in 1939, which led to extensive transfers of population and the persecution of Jews under the Nazi administration. This was followed by subsequent war plunders and the post-war creation of a new political and social order. As a result of the 1945 Potsdam Agreement, German nationals had to leave the territory of Czechoslovakia. There were also extensive exchanges of minority groups with Hungary. In addition, the new socialist Czechoslovakian administration issued a series of regulations, the so-called Beneš decrees, which expropriated the enemy property, in particular the property of German, Austrian and Hungarian nationals (Frommer 2005). Further Czechoslovakian legislation also nationalized property of wealthy landowners. The same fate was shared by the abandoned Jewish heritage. Hence the post-war period was characterized by substantial displacement of populations and the nationalization of private art collections. As a consequence, state museums of post-war socialist Czechoslovakia acquired many displaced, looted or confiscated cultural objects. Sometimes items taken from Slovak territory were added to Czech collections, and vice versa.

After the “Velvet Revolution”, democratic federal Czechoslovakia had to confront all these questions, which generally focused on the restitution of cultural property. This was settled by the

privatization acts passed in 1990 and 1991. Arguably, the implementation of these regulations required more complex legal solutions than the distribution of state cultural property after the 1993 dissolution. The territorial displacement of cultural objects between the two countries was not particularly frequent and was difficult to settle since during the circa fifty years of post-war history of Czechoslovakia, both republics kept separate national collections. Therefore, all interstate controversies relating to the situation of cultural heritage were decided in the first few years after dissolution. However, both states still have to constantly deal with private claims. The solutions applied to state succession of state cultural property of the former Czechoslovakia relate to two sets of issues: distribution and allocation of state cultural objects; and succession to state archives and library collections.

The 1993-1994 Czech-Slovak agreements on the exchange of cultural objects

At the beginning of 1993, immediately after the official split of Czechoslovakia, the two republics signed a bilateral agreement on the reciprocal arrangement of cultural heritage issues. This appointed a special Czech and Slovak commission responsible for the allocation of certain displaced cultural objects of state property. The negotiations began in 1993 and concluded in 1994 (Odendahl 2005: 155). On 26 September 1994 in Brno the two states signed the Agreement on the Exchange of Certain Objects of Cultural Heritage (Czechoslovakia 1994), it referred more particularly to a group of medieval paintings.

The Czech Republic was obliged to hand over ten tables forming the XIV century polyptych of St. Mary with Saints (Bojnicky Altar) by the famous *Trecento* Florentine master Nardo di Cione. The altar constitutes the only entirely preserved work of this artist. It came from the vast art collection created in the second part of the nineteenth century by a Hungarian aristocrat, Count János Pálffy (1829–1908), one of the most renowned collectors and antiquarians in Central Europe. He placed his collections in several residences in Vienna, Bratislava, Budapest, Paris as well as in his country houses situated on the present territory of Slovakia, which at that time constituted a part of the Hungarian Crown. He chose the medieval castle of Bojnice as his residence-museum. Among other artworks, he installed there the polyptych of Nardo di Cione. In his will, Pálffy bequeathed the core of his collection of paintings to the National Picture Gallery in Budapest, and bound his heirs to keep the residences in Bojnice, Vienna, Budapest and Pezinok as public museums. In addition, the art collections had to be entirely preserved in their original place. However, after his death and after the dissolution of Austria-Hungary, this collection was dispersed between different successors, and at the same divided by the new state borders - the majority of Pálffy's lands, including the Bojnice Castle, were situated on the territory of the newly created Republic of Czechoslovakia from 1919. In the interwar period, the heirs of János Pálffy sold many precious pieces of art, and in 1939 the castle and surrounding lands were purchased by a private person. Finally, after WWII the residence and its furnishing were nationalized and some artworks, including the Bojnicky Altar, were sent to the National Gallery in Prague (Ciulisová 2006: 201-209).

During the negotiations after the split of the federal state, the Czech Republic agreed to transfer the altar to Slovakia provided that the latter would give an equivalent of ten paintings from the same epoch. Consequently, both republics decided to exchange the paintings whose detailed list was annexed to the 1994 Agreement. In this way, the cultural objects were returned

to Slovakia on the basis of the territorial link with the place where the collection had been originally established. It also seems that the artistic integrity of the castle-museum was taken into consideration. However, the handing over of the property was not based on a gratuitous contractual agreement between the two successors of the CSFR. Inversely, Slovakia had to pay the Czech Republic a certain ‘compensation’ in nature.

Eventually, the return of the Bojnicky Altar to Slovakia took place on the 15th December 1995. The official ceremony of the vesting of paintings was celebrated on December 18th and was widely commented on in the mass media and perceived as a “national” success. For the occasion, in 1997 a special Slovakian postage stamp was issued.

As regards the apportionment of state library collections, the dismemberment of Czechoslovakia did not cause any particular difficulties. Both states had separate national libraries and separate state archives. After the “divorce” of 1993, the Czech Republic and Slovakia decided on the delimitation of certain “federal” records, which in the vast majority continued to be preserved on the territory of the Czech Republic. For instance, such a solution was applied with regard to the important, politically as well as historically, archive of the former socialist Ministry of the Interior. In Prague the Czechoslovak Documentation Centre (Československé dokumentační středisko) was also established in 1999, which gathers exiled Czechoslovak archival heritage produced during Soviet domination.

Thus, the division of state cultural property of the CSSR constitutes a model example of a friendly dissolution of a multinational state. Furthermore, it fits into the legal pattern worked out on the occasion of Austro-Hungarian relations in the interwar period. Moreover, in the process of amicable separation, both successor states of CSFR tended to maintain close cultural and scientific relations. Certain more precise provisions are to be found in the 1992 bilateral agreement (Czechoslovakia 1992b) with regard to good-neighbour relations and the rights of minorities, which provided for the reciprocal obligations to preserve and protect the other party’s cultural heritage and monuments (Art. 15), reciprocal promotion of language and cultural cooperation (Art. 8, 14, 16), including combating the illicit cross-border transfer of cultural material (Art. 19).

Dissolution of Yugoslavia and the heritage controversy between Slovenia and Italy

The second case-study in this paper concerns the controversy between Slovenia and Italy with regard to state succession and the so-called Istria’s Jewels. This involved almost one hundred works of art from the fourteenth to the eighteenth centuries by the most prominent artists of the Republic of Venice, such as: Benedetto and Vittorio Carpaccio, Cima da Conegliano, Alvise Vivarini, Jacopo Palma il Giovane and Giambattista Tiepolo (Hoyer 2005). Until 1940-41, these art treasures had been preserved in three coastline municipalities of Italian Istria: Koper (Capodistria), Piran (Pirano), and Izola (Isola), nowadays known as the Slovenian Littoral or Primorska. In 1940, before the war against Yugoslavia, Italian authorities decided to evacuate the most valuable works of art from the Eastern borderlands, including objects from the churches and museums of Istria. The removal, ordered for preservation reasons, was done in conformity with domestic Italian legislation and was approved by the local and Church administration (Magani 2005).

Initially, the objects were gathered at a collection point in the province of Udine. In 1943, some of them were returned to the owners, *e.g.* a priceless group of paintings from Saint Anne's Church and Monastery in Koper (Algeri, L'Occaso 2005: 87-98). The majority of the works of art evacuated from the Slovenian Littoral were, however, sent to Rome, where they remained sealed in wooden crates for the next sixty years. In 2005-2006, some of these objects were exhibited at the Revoltella Museum in Trieste.

As a result of post-WWII decisions, the Istrian peninsula became the territory of the Socialist Federal Republic of Yugoslavia (SFRY). However, the allocation of 'Istria's jewels' has never been settled. After the dissolution of Yugoslavia, Slovenia – one of the SFRY successors states – asked for the return of the evacuated objects to the places where they had been commissioned and from which they had been taken.

Historical background

For centuries, the coastline municipalities of Piran, Koper and Izola had been under the rule of the Republic of Venice. After the fall of the Republic in 1797, sovereignty over the multi-ethnic territory of Istria passed several times between the various Napoleonic states and Austria. Eventually, the 1815 Congress of Vienna granted the entire territory of Venice with its Istrian and Dalmatian settlements to Austria, which already controlled the important commercial cities of Trieste and Fiume (Rijeka) on the Adriatic coast. In 1866, Austria ceded Venice and Veneto in favour of Italy, whereas the Istrian peninsula and the city of Trieste remained under Austrian rule. After WWI, and the dissolution of Austria-Hungary, Istrian peninsula was transferred to Italy. In this way, Italy gained control over a great part of the territory of the Republic of Venice and managed to recover a number of artworks of Venetian provenance.

The situation completely changed as a result of the war against Yugoslavia and the final defeat of Italy in WWII. On the basis of the 1947 Paris Peace Treaty (Italy 1947), Italy ceded its Adriatic islands, the city of Rijeka and a large part of Istria to the SFRY. The Eastern coast of the Istrian peninsula (including the municipalities of Koper, Piran and Izola) and the area of the city of Trieste formed the separate Free Territory of Trieste (FTT), which was not however considered as ceded territory in the meaning defined in the treaty (Art. 21.4). The FTT remained divided between Allied military control and Yugoslavia according to the post-war demarcation line, though the 1947 Treaty established it as a neutral unitary entity with its own civil administration. The northern part of the FTT with the city of Trieste (Zone A) was controlled by the Allies and the southern part with Primorska (Zone B) by Yugoslavia. In 1952, Italy obtained administrative powers in Zone A, and in 1954 (London Memorandum) (FTT 1955) the division of the FTT between Italy and the SFRY was agreed. The part of the coast, comprising the municipalities of Koper, Piran and Izola, was transferred to the Socialist Republic of Slovenia. Subsequently, under the 1975 Treaty of Osimo (Italy 1976), Zones A and B of the FTT were definitively divided and incorporated into the previously administering states.

The 1947 Treaty obliged Italy to restore to Yugoslavia an extensive array of cultural material relating to the ceded lands, based on the rudimentary criterion of territoriality. In the execution of this treaty, in 1961 Italy and Yugoslavia signed an agreement on the regulation of restitution of cultural property. This did not, however, regulate the allocation of art objects evacuated from Zone B of the FTT. In the following years, Italy and Yugoslavia did not manage to solve the

issue. In fact, the 1975 Treaty of Osimo did not contain any provisions on the allocation of cultural material from Zone B, though certain attempts to address the question were made during the treaty negotiations at Osimo. Accordingly, the representatives of both states exchanged diplomatic notes, in which they agreed that the issues relating to cultural property pertaining to the Free Territory of Trieste would be considered after the entry into force of the 1975 Osimo Treaty (Jakubowski 2010: 233).

Subsequently, the delegations of both states met a few times to discuss the issues. At the intergovernmental level, the talks between the SFRY and Italy ceased in 1988 (Žitko 2005: 79). Slovenian Church authorities undertook separate negotiations. These were possible thanks to the formal division of the diocese of Trieste and the diocese of Koper ordered by the Holy See in 1977 (Jakubowski 2010: 233). Some talks also took place on the professional level between art historians from Slovenia and Italy.

The question of the allocation of Istria's art treasures was extremely delicate due to the difficult history of the region and its inhabitants. In particular, Italian Fascist assimilationist policies towards all national and ethnic minorities before WWII fed hostile attitudes amongst the Slavic and Italian inhabitants of Istria. The following Italian invasion of Yugoslavia, and the cruelty and crimes of war only strengthened anti-Fascist and anti-Italian sentiment. The escalation of the conflict led to ethnic cleansing pursued by Yugoslav troops, especially in Istria in 1943-1949, completed by the expulsion of practically the entire Italian population from Istria and Dalmatia. In such circumstances, the removal of Venetian works of art was perceived by the Italian exiles as a rightful act of preservation of their collective identity and historical memory. Thus, any legal solutions with regard to these treasures were hindered because of the strong emotions attached to cultural heritage and the old rancour flowing from bitter memories.

Negotiation of Difficult Pasts

Following the dissolution of the SFRY, Slovenia was the only SFRY successor state that brought a claim against Italy for the repatriation of cultural objects. The first exchange of notes took place as early as 1992 and both states agreed to find a solution in respect of the implementation of the 1975 Osimo Treaty, including the issue of cultural property (Žitko 2005: 81). The question became public in 2002, when Italy decided to open the sealed wooden boxes containing the Istrian masterpieces, stored in Rome. On this occasion, it was revealed that Italy did not provide adequate conditions for the preservation of the objects. Hence the paintings were in urgent need of restoration. That same year, Slovenia proposed to set up a commission in order to discuss the future of the artworks. In 2004, the questions concerning the repatriation of cultural property to the Slovenian Littoral were submitted at the session of the Slovenian-Italian commission for adopting the program of cultural co-operation between both states (Žitko 2005: 81).

The legal argumentation for the claims of Slovenia against Italy was prepared before the dismemberment of the SFRY. At the conferences in 1987-88, Croat and Slovene experts held that the list of demanded cultural property would be based on four criteria: territory, date of removal, category of property, and available documentation of the removal. Accordingly, the claims referred to the artworks originating from the territories ceded in 1947 and those of Zone B of the FTT, removed in the period 1918-1954 (from the end of WWI until the split of the FTT). The objects being claimed not only concerned state-owned cultural items but also those of

public property. Apparently, the latter would also comprise ecclesiastic property. Relevant proof of removal was provided. The basis for the repatriation of the objects was based on the provisions of the 1947 Paris Peace Treaty and on the exchange of notes at the Osimo negotiations.

In 2005, Slovenia issued a formal request to Italy (Siehr 2005: 507), and presented an official motion to the ICOM Legal Affairs and Properties Committee, asking for assistance in the settlement of the dispute (Jakubowski 2010: 235). Basically, Slovenia argued that under the 1947 Peace Treaty, Italy was obliged to hand over all cultural material removed from the territories ceded to Yugoslavia, comprising the territory of the Republic of Slovenia. Moreover, as Slovenia succeeded to the 1975 Osimo Treaty, the 1975 exchanges of notes on the allocation of cultural material removed from Zone B of the FTT were also binding.

Italy, for its part, carried out careful restoration of the disputed artworks, and in June 2005 the exhibition of 21 objects (paintings, bronzes and wooden sculptures) was opened in Trieste. The majority of items came from the churches of Koper, Piran, and from the Regional Museum of Koper. As explained in the exhibition catalogue, the objects would be permanently transferred to the National Gallery of Art in Trieste (Galleria Nazionale d'Arte Antica di Trieste) (Jakubowski 2010: 236). The choice of the city was not accidental. Trieste was the formal administrative capital of the entire FTT, which also included the three municipalities concerned in Zone B. Thus, it may seem that by placing the removed objects in this city, all of Italy's obligations under the 1947 Peace Treaty have been fully complied with. In other words, the objects of this act were returned to the territory of the FTT.

A formal statement by the Italian government in response to Slovenia's request of 2005 has not been officially published, but it can arguably be reconstructed on the basis of the few opinions expressed by the representatives of the Italian government. Accordingly, it is argued that there was no obligation to return the artworks to Slovenia, since Italy had a right and duty to evacuate and displace its cultural treasures endangered by war operations. The items requested by Slovenia came from Zone B of the FTT, which formally passed to the SFRY only in 1975 on the basis the 1975 Osimo Treaty. Thus, the objects removed from Zone B do not enter into the categories of cultural items that are to be returned to Yugoslavia under the 1947 Paris Peace Treaty. Furthermore, the 1975 Osimo Treaty did not contain any restitution clauses.

Apart from this, it has been stressed that the legal status of the evacuated cultural property was not equal, since it comprised objects of state, private and ecclesiastic property. After the Second World War, many private owners fled to Italy. In a similar way, the property of Italian Catholic parishes was entirely transferred together with the local communities. For instance, it happened that a convent, from which the artworks were taken in 1940, was subsequently closed and relocated to Italy by the communist government of the SFRY. Thus, the rightful owners of the paintings were no longer domiciled in the ceded territory. Finally, some Italian politicians argued that the artworks in question are monuments of Italian culture and were created by Italian communities illegally expatriated from the ceded territories. Thus, the exposition of the Italian artworks in Trieste could be the only acceptable solution.

In this context, it appears essential to quote the response given by Famiano Crucianelli, Under-Secretary in the Italian Ministry of Foreign Affairs, to the parliamentary interpellation of 19 February 2007 (Jakubowski 2010: 236-237). Referring to the on-going talks with Slovenia and

to the possibility of formal negotiations on the status of the Istrian treasures, as agreed in 1975, the Under-Secretary argued that Italy was under no international obligation imposing the restitution of the objects concerned, since they had been transported within the territory of Italy. Consequently, Italy was free to change the place of their preservation on the basis of the domestic regime for the protection of national patrimony. Moreover, the evacuation had been concluded prior to war operations. Therefore, the question of the removal of the Istrian treasures could not be examined in light of the international regime on the protection of cultural property in the event of war, according to which cultural property unlawfully displaced under occupation has to be returned to its place of origin. Finally, the question of the Istrian treasures could not, in any case, be discussed in terms of due restitution. It could, however, be seen in the broader framework of bilateral negotiations in matters of cultural relations, enjoyment and access to the objects in question, their conservation, study and research.

A much more emotional response was given by the Under-Secretary in the Italian Ministry of Culture, Vittorio Sgarbi, who on various occasions expressed the view that the disputed artworks were “completely Italian”. Therefore, they should belong to their cultural heirs – Italian exiles from the ceded territories. In this regard, Sgarbi recalled the cases of repatriation of cultural items to indigenous communities who created them. Accordingly, he invoked the significance of the linkage between art treasures and the memory of displaced human communities. For these reasons, the return of the evacuated art treasures to Istria would be against the dignity of exiles and such a sacrifice cannot be demanded by the Italians, Slavs or the entire international community (Sgarbi 2005: 40-41).

The principle of cultural co-operation

The controversy between Italy and Slovenia illustrates just how emotionally and politically marked the question of the allocation of cultural property in state succession can be. Undoubtedly, the disputed artworks removed from public institutions and museums are territorially linked to the Istrian municipalities under the sovereignty of Slovenia. Therefore, the legal argumentation of Italy is not convincing in certain aspects. Even if one accepts the argument that the obligation to return the cultural objects under Art. 12 of the 1947 Peace Treaty does not apply to the artworks removed by Italy from Zone B of the Free Territory of Trieste, it does not, however, exclude the right of Slovenia to the state cultural property of these territories. In such cases, the successor state would be entitled to claim the reintegration of its cultural treasures, based on the rudimentary principle of territoriality. In addition, Yugoslavia and Italy, during the bilateral negotiations at Osimo in 1975, agreed that the issues relating to cultural property, works of art, and archives pertaining to the Free Territory of Trieste needed to be considered. As mentioned, such negotiations have never produced any effect and the evacuated objects have remained carefully hidden for more than sixty years in wooden crates. Nowadays, Slovenia can invoke both treaties as well as an exchange of letters between the SFRY and Italy.

However, it must be stressed that the art treasures from Istria can by no means be treated as property looted or unlawfully displaced during war. The majority of objects were evacuated by the Italian administration in 1940 from the territories under Italian sovereignty for preservation reasons and in conformity with the law applicable at the time of removal. In this regard, the

Italian position needs to be fully supported. In addition, the collective rights of the exiles to control their cultural heritage need to be taken into account.

It appears that in respect of issues such as the status of 'Istria's Jewels', the best way of settling the claims is through close international cultural co-operation. Importantly, current interstate practice shows that actual agreements in respect of the fate of tangible cultural property may find a wide range of solutions based on international cultural cooperation, far beyond mere allocation and distribution considerations. From the above listed legal positions of Italy and Slovenia, it appears that both states consider this solution as a certain compromise, perhaps within the broader framework of the protection of European heritage. Indeed, the cultural legacy of Venice is of great importance to the entire Western civilization, beyond nation-oriented considerations. Thus, it seems crucial to enable the study of these masterpieces *in situ*, taking as a point of reference the entirety of artistic and symbolic programmes, whose essential part constitutes the artworks in question. This would lead to the recovery of the historical and artistic context of Venetian art. Such an approach would also be in line with international standards, postulating the preservation of cultural property in its places of origin. In technical terms, both states could apply the policies of long-term deposits and loan exchanges. Yet it needs be recognized that the receiving state (Slovenia) shall be obliged to provide adequate measures of protection and conservation. Moreover, it seems crucial that Italy, representing the communities who created the artworks, and Slovenia, the country of origin (historical context), would jointly decide on the exposition, management and common narrative of the history of the Venetian municipalities in Istria. If such requirements *were fulfilled*, the case of Istria's jewels would contribute to the intercultural dialogue and final post-conflict reconciliation of both nations.

Final remarks

The legal regime on the allocation of cultural property in cases of state succession and it is founded on two interconnected, though often conflicting, principles: territorial provenance (origin) of cultural assets and human linkage with such material. The concept of territoriality arises from the triad: nation-territory-cultural heritage is essentially rooted in the idea of European nation-state. In the last fifty years, the principle of territoriality was however accommodated within the framework of the preservation of cultural heritage. The linkage between these two principles is crucial, as the protection of cultural property in its original historical, geographical and cultural contexts constitutes one of the major fundamentals of international cultural heritage law. Therefore, the settlements on the allocation of cultural material need to be balanced by the local or regional value of a given object.

Arguably, such territorial and protective approaches do not take into account the interest of a number of stakeholders, other than states. In other words, they do not refer to the value of cultural heritage for society, *i.e.* the human cultural communities, groups and individuals that have created or maintained a given heritage and who therefore may have an interest in not rescinding such human link because of territorial vicissitudes and changes involved in state succession. The above-described case-studies have shown that the territorial principle can be fully applied only in the cases of state succession processes, which do not cause any rupture between cultural communities and their heritage. Inversely, the allocation of cultural treasures in the situations that affect profound ethnic and national configurations cannot be easily solved without involving

painful consequences for cultural communities. How can these conflicting interests be reconciled? Is the principle of territoriality, derived both from international norms on state succession and cultural heritage protection, already challenged by the emerging human-oriented principle of the enjoyment of cultural heritage?

It appears, that nowadays the promotion of cross-border cultural relations may create a convenient platform for settling more difficult problems that originate from past displacements of cultural material or other cultural injustices. Moreover, the practice of amicable cultural agreements also provides and facilitates mutual protection and preservation of tangible cultural heritage situated in respective territories of the states involved. Thus, the objective of protection and access to cultural heritage becomes more and more relevant to the processes of state succession.

In this context, the role of national museums is fundamental as they often constitute the reservoirs of the values significant for a given national community and its heritage, and also physically preserve the majority of disputed items. Thus, the policies applied by such institutions in terms of access, joint custody and management, and long-term deposits may provide indispensable tools for cultural, national, ethnic and political reconciliation in cases of state succession.

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